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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195666
Party	Defendant Power Beverages, LLC
Correspondence Address	THOMAS L. MOSES MONAHAN & MOSES, LLC 13-B W WASHINGTON ST GREENVILLE, SC 29601-2734 UNITED STATES tom.moses@momolaw.com
Submission	Answer
Filer's Name	Timothy J. Monahan
Filer's e-mail	tim.monahan@momolaw.com
Signature	/Timothy J. Monahan/
Date	02/22/2011
Attachments	2011 02 22 Applicants Answer and Affirm Defenses.pdf (4 pages)(221475 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Philip Restifo,)	
)	Opposition No. 91195666
Opposer,)	
)	
- against -)	
)	APPLICANT’S ANSWER AND
)	AFFIRMATIVE DEFENSES
POWER BEVERAGES, LLC)	
)	
Applicant.)	

COMES NOW Applicant, Power Beverages, LLC, and submits the following Answer in response to the Opposition.

1.

Opposer’s Allegation: “The opposer, Philip Restifo President of Data Commodities Ltd., are the true rightful owner of the trademark in question.”

Answer: Denied.

2.

Opposer’s Allegation: “That said mark was created, developed, designed, bottled, with Federal approvals and sold in commerce.”

Answer: Applicant admits that Applicant has placed vodka bearing the YING YANG mark in commerce. Applicant denies that Opposer has any ownership interest in Applicant’s use. Opposer’s allegations, as they relate to dilution, priority and likelihood of confusion has been dismissed pursuant to the Board’s January 11, 2011 Order, and do not require an answer.

3.

Opposer's Allegation: "That the applicant is not and was not, at any time of filing the rightful owner of the said mark."

Answer: Denied.

4.

Opposer's Allegation: "That the applicant has no bone fied use of said mark in commerce prior or after the filing of said mark."

Answer: Denied.

5.

Opposer's Allegation: US Application No. 77080324 cited as a basis for the Opposition.

Answer: Applicant denies that Opposer has any ownership interest in US Application No. 77080324. Opposer's allegations, as they relate to dilution, priority and likelihood of confusion has been dismissed pursuant to the Board's January 11, 2011 Order, and do not require an answer.

AFFIRMATIVE DEFENSES

6.

Philip Restifo is not the real party in interest with regard to any ownership claim in the subject application (US Application No. 77925974) or the cited mark (US Application No. 77080324).

7.

Opposer's claims are barred, in whole or in part, by the doctrine of laches.

8.

Opposer's claims are barred, in whole or in part, by the doctrines of waiver and acquiescence.

9.

Opposer's claims are barred, in whole or in part, by the doctrine of estoppel.

10.

Opposer's claims are barred, in whole or in part, by the doctrine of unclean hands.

WHEREFORE, Applicant prays that the Opposition be dismissed.

Respectfully Submitted,

Date: Feb. 22, 2011



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Philip Restifo,

Opposer,

- against -

POWER BEVERAGES, LLC

Applicant.

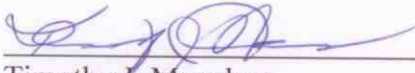
Opposition No. 91195666

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2011, a true and correct copy of the foregoing **APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES** was served on the following by the method indicated below:

Mr. Philip Restifo
8101 W. Rosada Way
Las Vegas, NV 89149
cigars555@cs.com
Opposer

- ☒ (X) U.S. Mail, Postage Prepaid
- ☐ () Hand Delivered
- ☐ () Overnight Mail
- ☐ () Facsimile
- ☐ () Electronic Mail



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